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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

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DOCKET NO. W-02690A-97-0710

DOCKET NO. W-03476A-97-0710

DECISION NO. 61843**OPINION AND ORDER**

IN THE MATTER OF THE APPLICATION OF
THE TRANSFER OF THE CERTIFICATE OF
CONVENIENCE AND NECESSITY FROM
AUBREY WATER COMPANY, AN ARIZONA
CORPORATION, TO AUBREY WATER
COMPANY, FORMERLY KNOWN AS SANTA FE
FINANCIAL HOLDINGS, INC., A DELAWARE
CORPORATION.

DATE OF HEARING: May 4, 1999

PLACE OF HEARING: Phoenix, Arizona

PRESIDING OFFICER: Teena Wolfe

APPEARANCES: Mr. Jeffrey W. Crockett, SNELL & WILMER, LLP, on behalf
Applicants Burlington Northern Santa Fe Manitoba, Inc., dba Aubrey
Water Company and BN Leasing Corporation; andMr. Paul Bullis, Chief Counsel, Legal Division, on behalf of the
Utilities Division of the Arizona Corporation Commission.**BY THE COMMISSION:**

On December 16, 1997, Aubrey Water Company, an Arizona corporation, ("Aubrey") and
Burlington Northern Santa Fe Manitoba, Inc., dba Aubrey Water Company, ("BNSF Manitoba dba
Aubrey") a Delaware corporation formerly known as Santa Fe Financial Holdings, Inc. filed with the
Arizona Corporation Commission ("Commission") a joint application for approval of the sale of
assets and transfer of the Certificate of Convenience and Necessity ("CC&N") from Aubrey to BNSF
Manitoba dba Aubrey ("Application"). The Commission's Utilities Division Staff ("Staff") filed its
Staff Report on this matter on January 21, 1998, recommending approval of the transfer following a
hearing. By Procedural Order dated February 6, 1998, a hearing was scheduled for March 16, 1998.

Subsequent to the February 6, 1998 Procedural Order, BNSF Manitoba dba Aubrey filed
Requests for Continuance on four occasions in order to allow it time to amend the Application as to

1 the transferee of the CC&N.¹ Staff had no objection to the requested continuances and the he
2 was rescheduled by Procedural Order in each instance.

3 On March 1, 1999, BNSF Manitoba dba Aubrey and BN Leasing Corporation ("BNLC") filed
4 an amendment to the application ("Amendment"). BNSF Manitoba dba Aubrey and BNLC are both
5 subsidiaries of Burlington Northern Santa Fe Railway Company. In the Amendment, BNSF
6 Manitoba dba Aubrey and BNLC requested an Order of the Commission retroactively approving the
7 prior transfers of the CC&N and assets from Aubrey to BNSF Manitoba dba Aubrey, and
8 subsequently to BNLC, and authorizing BNLC to operate as a public service corporation pursuant to
9 the Aubrey CC&N. On March 3, 1999, Staff requested that the hearing be continued for thirty days
10 from its April 1, 1999 date in order to allow Staff additional time to analyze the Amendment. The
11 Company did not object, and by Procedural Order dated March 4, 1999, the hearing was set for May
12 4, 1999.

13 On April 23, 1999, Staff filed an amended Staff Report in this matter, recommending
14 approval of the Application, as amended on March 1, 1999, following a hearing.

15 Pursuant to Commission Procedural Order of March 4, 1999, a hearing was held in the above-
16 captioned matter on May 4, 1999, before a duly authorized Hearing Officer of the Commission, at
17 which Applicant and Staff presented evidence.

18 * * * * *

19 Having considered the entire record herein and being fully advised in the premises, the
20 Commission finds, concludes, and orders that:

21 **FINDINGS OF FACT**

22 1. BNSF Manitoba dba Aubrey currently serves approximately 267 customers in an area
23 located in Seligman, which is located approximately 70 miles west of Flagstaff, Arizona along
24 Interstate 40.

25 2. On December 16, 1997, BNSF Manitoba dba Aubrey filed the Application with the
26 Commission.

27 ¹BNSF Manitoba dba Aubrey was attempting to find a suitable buyer and arrange the sale of the Aubrey system, or f.
28 that, to provide Burlington Northern Santa Fe Railway Company, its parent, with additional time to determine the proper
subsidiary or affiliate to own the Aubrey water system.

1 3. On March 1, 1999, BNSF Manitoba dba Aubrey and BNLC, which are both
2 subsidiaries of Burlington Northern Santa Fe Railway Company, filed the Amendment. The
3 Amendment requests that the Commission issue an Order retroactively approving the prior transfers
4 of the Aubrey system assets, and approving the transfer of the Aubrey CC&N to BNLC.

5 4. Aubrey was issued a CC&N by Decision No. 58172 (February 4, 1993). Aubrey was
6 formed as a subsidiary of the Atchison, Topeka and Santa Fe Railway Company ("ATSF").

7 5. In September of 1995, Aubrey merged with Santa Fe Financial Holdings, Inc.,
8 ("SFFH") a Delaware corporation, which was also a subsidiary of ATSF. Commission approval was
9 not requested prior to the merger.

10 6. The surviving entity from the September 1995 merger was SFFH. Subsequently,
11 SFFH changed its name to Aubrey Water Company. Thus, the surviving entity became Aubrey
12 Water Company, a Delaware corporation, a subsidiary of ATSF.

13 7. On December 31, 1996, ATSF merged with Burlington Northern Santa Fe Railway
14 Company, with Burlington Northern Santa Fe Railway Company as the surviving entity. Aubrey
15 Water Company, the Delaware corporation, thereby became a subsidiary of Burlington Northern
16 Santa Fe Railway Company.

17 8. On December 15, 1997, the name of Aubrey Water Company, the Delaware
18 corporation, was changed to BNSF Manitoba. BNSF Manitoba continued to do business as Aubrey
19 Water Company, and on December 16, 1997, filed the Application with the Commission.

20 9. Staff filed a Staff Report on the Application on January 21, 1998.

21 10. By Procedural Order of February 6, 1998, the matter was set for hearing to commence
22 on March 16, 1998.

23 11. On March 10, 1998, BNSF Manitoba dba Aubrey filed a Request for Continuance of
24 the hearing. Staff had no objection to the requested continuance, and by Procedural Order dated
25 March 16, 1998, the hearing was rescheduled for May 27, 1998.

26 12. On May 19, 1998, BNSF Manitoba dba Aubrey filed a second Request for
27 Continuance for 120 days to allow it to pursue negotiations with a potential purchaser. Staff had no
28 objection to the requested continuance, and by Procedural Order dated May 21, 1998, the hearing was

1 rescheduled for October 1, 1998.

2 13. On September 23, 1998, BNSF Manitoba dba Aubrey filed a third Request for
3 Continuance for 120 days to finalize the terms and conditions of a sale to one of two potential
4 purchasers, or failing that, to provide its parent company with additional time to determine the proper
5 subsidiary or affiliate to own the Aubrey water system. Staff had no objection to the requested
6 continuance and by Procedural Order dated September 25, 1998, the hearing was rescheduled for
7 February 1, 1999.

8 14. On January 25, 1999, BNSF Manitoba dba Aubrey filed its fourth Request for
9 Continuance to allow the Company time to amend the Application and to provide notice of the
10 Application to its customers. Staff had no objection to the requested continuance and by Procedural
11 Order dated January 27, 1999, the hearing was rescheduled for April 1, 1999.

12 15. On March 1, 1999, BNSF Manitoba dba Aubrey and BNLC filed the Amendment.

13 16. BNSF Manitoba dba Aubrey has entered into a Sale Agreement with BNLC to sell the
14 Aubrey system assets, including land, easements, rights of way, improvements located there
15 county franchise, equipment, other Aubrey property, and water rights to BNLC, and to transfer the
16 Aubrey CC&N to BNLC.

17 17. On March 4, 1999, the Company filed in this docket, as an additional exhibit to the
18 Amended Application, a copy of BNLC's Certificate of Good Standing issued by the Delaware
19 Office of the Secretary of State.

20 18. On March 17, 1999, notice of the hearing in this matter was published in the Williams-
21 Grand Canyon News.

22 19. On April 14, 1999, BNLC filed in this docket a copy of the Arizona Department of
23 Environmental Quality Satisfaction and Termination of Consent Order in the matter of Aubrey Water
24 Company dated August 6, 1998, which indicates that the Aubrey system is in compliance with
25 Arizona Drinking Water Rules.

26 20. Also on April 14, 1999, BNLC filed in this docket a copy of the letter notifying BNLC
27 that its Application for Authority to transact business in Arizona was approved and filed on April
28 1999.

1 21. On May 14, 1999, BNLC filed in this docket a Notice of Filing Affidavit of
2 Publication of Application for Authority to Transact Business in Arizona.

3 22. At the hearing, Staff testified that in this instance, approval of the prior transfers of the
4 Aubrey system assets is in the public interest, and therefore recommended approval of the
5 Application as amended on March 1, 1999 subject to the following conditions:

- 6 (a) BNLC should file, within 120 days from the effective date of this
7 Decision, a copy of its Yavapai County franchise;
- 8 (b) BNLC should file, within 120 days from the effective date of this
9 Decision, a copy of its approved corporation status;
- 10 (c) BNLC should file, within 90 days from the effective date of this
11 Decision, documentation that verifies that it has clear title to any and
12 all real and personal property used in the production and distribution
of water to its customers.

13 23. Staff further recommended that BNLC be ordered to continue to charge the rates and
14 charges in effect for its predecessor, Aubrey Water Company.

15 24. Staff's recommendations in Findings of Fact Nos. 22 and 23 are reasonable.

16 **CONCLUSIONS OF LAW**

17 1. BNSF Manitoba dba Aubrey is a public service corporation within the meaning of
18 Article XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

19 2. The Commission has jurisdiction over BNSF Manitoba dba Aubrey and the subject
20 matter of the Application.

21 3. Notice of the hearing was provided in accordance with law.

22 4. There is a continuing need for service in the Aubrey system service territory.

23 5. BNLC is a fit and proper entity to operate the Aubrey water system as a public service
24 corporation providing water utility service.

25 6. The public convenience and necessity require the transfer of the Aubrey system assets
26 and the Aubrey CC&N to BNLC.

27 7. The Application should be approved.

28 ...

ORDER

IT IS THEREFORE ORDERED that the Application as amended on March 1, 1999 is hereby approved, conditioned upon BN Leasing Corporation's compliance with the Staff recommendations as set forth in Findings of Fact No. 22 above.

IT IS FURTHER ORDERED that BN Leasing Corporation shall continue to charge the rates and charges in effect for its predecessor, Aubrey Water Company.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.


CHAIRMAN

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, hereunto set my hand and caused the official seal of Commission to be affixed at the Capitol, in the City of Phoenix, this 21st day of July, 1999.


BRIAN C. McNEIL
EXECUTIVE SECRETARY

DISSENT _____
TIW:dap

1 SERVICE LIST FOR:

AUBREY WATER COMPANY

2 DOCKET NO.

W-02690A-97-0710 ET AL.

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